

PRESCRIPTION OVER-RULED

REPORT ON HOW ONTARIO'S WORKPLACE
SAFETY AND INSURANCE BOARD SYSTEMATICALLY
IGNORES THE ADVICE OF MEDICAL PROFESSIONALS



**ONTARIO
FEDERATION OF
LABOUR**

ONTARIO NETWORK
of
INJURED WORKERS' GROUPS



Prescription Over-Ruled: Report on How Ontario's Workplace Safety and Insurance Board Systematically Ignores the Advice of Medical Professionals

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The Ontario Federation of Labour (OFL) represents 54 unions and one million workers.
It is Canada's largest provincial labour federation.

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This document was proudly produced with unionized labour.

The contents of this report are opinions based on the experience, input and narrative of health professionals, injured workers and their advocates.

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INTRODUCTION

In September of this year, Dr. Brenda Steinnagel filed a lawsuit against her employer and the Workplace Safety and Insurance Board (WSIB), alleging that she was fired by the clinic she worked for at the behest of the WSIB, because she refused to change her medical opinion to the one that the Board wanted to hear.

While her accusations are no doubt shocking to the general public, for injured workers – as well as their advocates and health care providers – the lawsuit confirms what has long been suspected: The WSIB’s inappropriate regulation of medical care is hurting patients with work injuries.¹

Long before Dr. Steinnagel came forward with her lawsuit, health care workers in this province were raising red flags about the ways in which the province’s compensation system treats their patients. Recently, more than a dozen concerned medical professionals approached the Ontario Federation of Labour and the Ontario Network of Injured Workers’ Groups to address mounting concerns with WSIB interference in medical care. This report hopes to shed light on some of these concerns and their implications for workers’ health.

“In a desperate effort to reduce claims paid out, WSIB [has] been conspiring to deny legitimate claims in a shocking display of arrogance and corruption.”

**- Statement of claim of
Dr. Brenda Steinnagel**

The stories told in this report illustrate some of the ways the WSIB’s management of medical care and medical evidence harms patients. This includes failing to heed medical advice regarding readiness to return to work, insufficient treatment, blaming ‘pre-existing’ conditions for ongoing illness, or using independent medical reviews which proclaim patients to be healed, despite the evidence of treating practitioners. When these things happen, the injured patients find themselves re-victimized by the very system that is mandated to compensate and protect them.

¹ Hamilton Spectator (Jaques Gallant), *Fired Hamilton doctor sues WSIB over ‘fraud upon the public,’* 31 October 2014. <http://www.thespec.com/news-story/5928759-fired-hamilton-doctor-sues-wsib-over-fraud-upon-the-public/>.

FRANCOIS' STORY

Francois* worked as a millwright with the same company for almost 35 years when he suffered an electrical injury. He was healthy before this accident - he had previously lost a finger at work but had gone right back to work after it healed.

Francois was electrocuted by 600 volts from improperly wired equipment. He heard himself screaming, saw blinding white light, felt his muscles spasm throughout his body, and felt excruciating chest pain that he thought was a heart attack. He thought he was going to die.

Despite this trauma and ongoing pain, Francois tried to persevere and returned to work for his next scheduled shift. He managed to keep working for almost a year, all the while he became increasingly withdrawn and anxious, unable to tolerate noise and fearful of machines. He was managing to sleep only 2-3 hours per night and turned to alcohol.

Since he was back at work, the WSIB did not offer him any treatment. Without treatment he continued to deteriorate and began missing more and more time from work until he was let go.

At his wife's insistence, the WSIB finally agreed to specialized treatment almost a year-and-a-half later. The speciality clinic for electrical burns diagnosed Francois with post-traumatic stress disorder and severe depression. He began receiving some

psychological treatment in his community.

Francois' problems with the WSIB were only beginning though. First, his WSIB case manager threatened to cut off his benefits if he did not attend a return to work meeting at his workplace. His doctors felt that being in the workplace would be harmful to Francois, who was highly fearful of electrical equipment and not well enough to work. Francois became more distressed and the meeting was finally cancelled after the WSIB's own specialty clinic intervened.

The WSIB then sent Francois to a doctor of its own choosing. Francois' psychologist had asked for this assessment because he feared that Francois may have cognitive issues from the electrocution. Unfortunately, the WSIB doctor's report did more harm than good. The WSIB doctor tried to discredit the opinion of his treating psychologist, including his opinion about Francois' readiness to return to work and work restrictions. After seeing Francois once, the WSIB doctor recommended an immediate return to work plan.

Francois' psychologist will think twice before accepting any WSIB patients again. She is frustrated by the WSIB's ongoing requests for progress reports that it refuses to pay for and its ultimate disregard for her opinion on treatment.

** Not the injured worker's real name.*

BACKGROUND

Ontario's compensation system is mandated to provide wage loss benefits and health care benefits to workers who are injured on the job. By law, injured workers are barred from commencing lawsuits for their work injuries and must instead seek benefits from the WSIB. Legally, workers are entitled to treatment from the healthcare provider of their own choosing. Section 33 of the *Workplace Safety and Insurance Act* states that:

A worker who sustains an injury is entitled to such health care as may be necessary, appropriate and sufficient as a result of the injury and is entitled to make the initial choice of health professional for the purposes of this section.²

The Act goes on to state that “The Board shall pay for the worker’s health care.”³

When the Board refuses to cover health care costs, one of two things happens. If the health care service is not funded by OHIP, the cost is shifted to the injured worker, who must pay out of pocket if possible. However, many patients who are unable to work as a result of their injuries, are often unable to pay. If the worker cannot afford the treatment, he or she simply goes without the needed prescription medication, physiotherapy, psychotherapy, health care aides and other services.

On the other hand, if the necessary treatment is covered by OHIP, the cost shifts from the employer-funded WSIB to the publicly funded health care system. This means that every tax payer in the province ends up footing the bill to

care for people who are injured in the course of employment, instead of the business-funded system that is supposed to be covering the costs. The Canadian Medical Association, as far back as 2007, has raised concerns about workplace injury-related costs being shifted to the public system.⁴ In contrast, WSIB President and CEO David Marshall has bragged openly about how he has spent less money providing healthcare to injured workers than his predecessors. The WSIB, he boasts, now pays for “results” and not “process.”⁵

Similarly, when the WSIB deems an injured worker recovered and refuses to provide wage-loss benefits, the tax payer ends up paying the tab. Many people who can no longer work because of their injuries end up on the Ontario Disability Support Program, again shifting the costs from an employer-funded system to the taxpayers of Ontario.

2 *Workplace Safety and Insurance Act*, Section 33(1). <http://www.ontario.ca/laws/statute/97w16#BK36>

3 *Workplace Safety and Insurance Act*, Section 33(2).

4 Thompson, Aaron, *The Consequences of underreporting workers' compensation claims*. Canadian Medical Association Journal, 30 January 2007. 176(3) 343.

5 The Liversidge E-letter, 6 February 2014. <http://liversidge.com/Portals/0/eLetters/The%20Liversidge%20e-Letter%2020140206%20WSIB%20Chair%20at%20Board%20of%20Trade.pdf>

KAREN'S STORY

Karen* was an active young woman with an exceptional employment record when an accident at a mine seriously injured her shoulder and head. In the years since, it has been a constant struggle to acquire the physical and psychological therapy her medical team says she needs, and the wage loss benefits she should be entitled to.

Before her accident, Karen was active in a number of sports and hobbies. She enjoyed horseback riding every week, and was involved in training dogs for competition. She was also part of a competitive mine rescue team, a very grueling sport that requires intense mental and physical stamina. Her coworkers and supervisors have often noted that having her on the crew is good for morale, and she says she has received positive letters of recommendation from every employer she's ever worked for.

In June of 2013, Karen was driving a truck in the mine. As she was stepping out, her overalls got caught on one of the steps, causing her to lose her grip and fall, landing hard on her head and her shoulder.

After her accident, Karen developed nausea, headaches, dizziness, muscle strain, anxiety, and depression. She has been diagnosed with a number of conditions, including traumatic head injury, cervical strain, neck and shoulder injury and "concussion-related mental impairments." A whole range of treatments were suggested by her health care team, including medication, physio, massage and therapy with a psychologist. It was suggested she would benefit most from a gradual, WSIB-sponsored return to her pre-accident job. When many of these treatments were not offered, she did the only thing she

could and tried to return to work. Her attempt to go back was short lived, though, as she was unable to successfully complete the tasks she was assigned, and many of her symptoms began to worsen. Still, the WSIB interpreted her effort to return as a sign that she was capable of employment, and cut off her wage loss benefits, even though several health care professionals had indicated she should not be working due to dizziness and muscle damage.

Karen has had two previous head injuries, but had recovered from both and was living a normal life when her mine accident happened. Even though the evidence shows that her current symptoms arose only after the newest injury, the WSIB claims that her diagnosed symptoms are the result of a "pre-existing condition." In response to requests from her psychologist, the Board said they began reviewing Karen's file in April 2014. Despite multiple requests from her medical team and seven letters written by her legal aid lawyer (none of which received a response), no decisions have been made. The fact that no decisions have been made means that Karen cannot move through the appeal process. Karen is therefore stuck in limbo, and has been forced onto social assistance.

Based on evidence provided by her health care team, a number of other agencies (such as Employment Insurance and Canada Pension Plan) have agreed that Karen is unable to work because of her workplace injuries. Her health care team is frustrated that their professional opinions are not being valued by the Board.

** Not the injured worker's real name.*

THE NATURE OF THE PROBLEM?

The psychologists, physiotherapists, and other health care providers that have come forward to tell their stories here have raised a number of serious issues that they say are preventing them from being able to provide adequate care to their patients. The list of complaints put forward by practitioners is substantial, and many of them are chronicled in the stories contained within this report. The complaints are summarized below.

A. Inadequate services:

- Approval for services can take months, when patients' needs are often immediate.
- Treating physicians' referrals for psychological therapy are often denied, even in dire situations.
- The WSIB will refer an injury claimant to a specialist but will not fund sufficient time for a proper assessment and report. The WSIB also demands frequent progress reports that it will not pay for and the recommendations of which are frequently ignored.
- The treatment allowed is often too narrow, such as not covering activities related to brain injury rehabilitation; or occupational therapy.
- In cases where the WSIB does provide funding for psychological treatment, for example, the sessions are often cut off before the treating psychologist determines that healing is complete. Some health care professionals report that when they ask why funding for services has been discontinued, they are simply told that the Board is not required to provide explanations to care providers.
- If the psychologist feels that their patient is still struggling at the time that care is cut off, they are forced to either abandon a patient in need or provide services for free.
- Physiotherapists report that when ongoing treatments ("maintenance treatments") are denied, injured workers' conditions can degrade. This often leads to increase use of pain medication, loss of function, or self medicating with drugs and alcohol, all of which comes with significantly more side effects than proper physical treatment.

B. Ignoring the opinions of treating medical professionals (when those opinions are not what the WSIB wants to hear)

- The WSIB refers injured workers to medical professionals for assessment, and then fails to follow the professionals' recommendations.
- Despite medical opinions to the contrary, the WSIB often attributes illness or injury to "pre-existing conditions," and refuses to fund benefits or care.
- The WSIB will often seek second opinions from so-called "paper doctors," who simply review the file without ever meeting the patient. Dr. Brenda Steinnagel has alleged that the WSIB inappropriately pressures these doctors to deliver dishonest reports so that they can avoid paying benefits.
- The WSIB pressures workers to return to work even when their treating doctors recommend more time to heal.
- Injured workers' well-meaning attempts to return to work are being used against them as evidence that they are employable and healed, even when these attempts fail, resulting in loss of benefits.
- The WSIB actively tries to discredit the opinions of treating health care professionals when those opinions are likely to lead to increase benefit costs.

CONSEQUENCES

As the stories contained in this report show, there are drastic human consequences to the problems described above. Injured workers' physical and mental health, as well as their social well-being is profoundly affected by the WSIB's improper interference with medical care and bad faith decision-making.

Persons with work-induced disabilities are vulnerable. They frequently suffer mental health consequences and are at heightened risk of poverty. Recent research has shown that mental health problems in injured workers are elevated after their injury, and that the stress of dealing with the Board can actually make things worse.⁶

Even injured workers who receive benefits tend to experience higher levels of poverty than is found in society at large,⁷ and those who do not receive benefits are even worse off. A 2010 survey of people who self-identified as injured workers revealed that work injury has devastating effects on things like personal and romantic relationships, housing status, car

ownership, nutrition and substance abuse.⁸ These things are all tied to physical and mental health and well-being, yet for workers whose own health care teams testify to their need for treatment, proper care often remains out of their grasp.

Increased depression, including suicidal tendencies, loss of sustenance and deteriorating physical health are all consequences that have been witnessed by the health professionals involved in this report.

As a further complication, many health professionals now refuse to take on WSIB claimants as patients. The problem has become so bad that some clinics are hesitant to take patients who are connected to the WSIB, since experience shows them that their advice will simply be ignored, and they will be unable to provide the care that they know their patients will need.

6 O'Hagan, Fergal, et. al., Mental Health Status of Ontario Injured Workers With Permanent Impairments. Canadian Public Health Association Journal, July/August 2014. 103(4) e303. <http://journal.cpha.ca/index.php/cjph/article/view/3036>

7 Ballantyne, Peri, et. al., Poverty status of worker compensation claimants with permanent impairments. Critical Public Health, 17 March 2015. <http://www.tandfonline.com/doi/full/10.1080/09581596.2015.1010485>

8 Ontario Network of Injured Workers' Groups, Many Losses, Much Hardship, March 2012. http://injuredworkersonline.org/documents/reports-articles-and-papers/ONIWG_20120300_Injured_Workers_PovertySurvey2010_Report.pdf

TOM'S STORY

When Tom* was only in high school, his head was crushed between a transport truck and a loading dock ramp. That was ten years ago, and while he experiences significant psychological trauma, the WSIB refuses to pay his psychologist, but won't say why.

As a young man, Tom was working on a loading dock when a truck that lacked a reverse alarm pinned his head against the edge of the dock. The blow left him unconscious. At the hospital, he was found to have endured a serious skull fracture and a lot of bleeding in his brain. He had to have a piece of his skull removed for three months, during which time he was required to wear a helmet.

With the help of a team of rehabilitation health professionals, Tom was able to complete high school, but he still faces a number of serious barriers relating to his brain injury. He has very severe troubles with stress and overstimulation. He has a short temper, and struggles to understand other people's point of view. He tried attending college but had difficulty organizing information, memorizing and being flexible. To this day he has trouble holding down employment because he either quits or is let go due to his trouble tolerating the stimulation and speed of the job, his high level of irritability, or his difficulty managing stress.

In 2013, an emergency room physician who was extremely concerned about

Tom's panic experiences referred him back to the psychologist who had been on his rehabilitation team. While the WSIB funded some initial sessions, they were cut off in October 2014, despite the fact that according to his medical team, more treatment was needed. Obviously concerned for his patient's well-being, Tom's psychologist asked for justification for why the Board would reject sessions that were very strongly recommended by the injured worker's medical team, and was told that the "WSIB is not required to provide the grounds for their decision to health care providers."

Tom has a son, and is separated. At times, he has had to live in a room above his parents' garage so they could care for him when he had no other supports. He experiences severe depression, and readily admits that if he did not have a child to care for he would have killed himself a long time ago.

Tom's psychologist (whose level of concern for the injured worker has led him to provide treatment for free) says that "as a result of his accident Tom clearly requires ongoing rehabilitation, support, and a realistic vocational and supported work re-entry plan, but since 2014 all services have stopped," adding that due to "a lack of rehabilitation and support, this individual's life is now simply in ruins."

** Not the injured worker's real name.*

SOLUTIONS

The system isn't working, but that doesn't mean it can't. The Ontario Federation of Labour, the Ontario Network of Injured Workers' Groups, and the health care professionals involved in this report have a number of recommendations that we believe could solve the issues that have been presented here.

“Injured workers and their advocates are hopeful that many of Marshall’s regressive changes can be reversed.”

The compensation system in Ontario has been in retreat since the 1990s, but the changes that negatively affect workers have accelerated rapidly since David Marshall became president and CEO of the WSIB in January, 2010. The cuts made under Mr. Marshall's watch have produced or exacerbated many of the negative effects described in this report. Mr. Marshall is leaving that position at the end of this year, and the group of people who are presenting this report believe this is an opportunity for renewal. Soon, a new president will take over. Injured workers and their advocates are hopeful that many of Marshall's regressive changes can be reversed, and that the WSIB will take steps towards providing the services it was created to provide.

Recommendations:

1. Have Ontario's Ombudsman launch a formal investigation into the WSIB's treatment of medical advice. Particularly the way in which health care providers' professional advice is often not considered and the lack of explanation offered.
2. Collect and make public statistics on how often injured workers' health care providers' advice is disregarded.
3. Create a protocol that regulates rapid response times for requests from injured workers' health care team. For example, requiring a decision within 48 hours when an urgent request for care is submitted to the Board.
4. Eliminate the use of so-called “paper doctors,” who render decisions about care without ever meeting the patient.
5. Give proper weight to the opinions of the medical professionals who know the injured worker best – their own health care team.

KEITH'S STORY

Keith* suffered a brain injury and serious spinal injury when he fell eight feet and landed on his head. Despite immediate and ongoing physical and psychological distress, receiving treatment remains a constant struggle for this injured worker.

Keith was working underground at the time of the accident. Unfortunately, his helmet came off during the fall and offered him no protection. When his head struck rock, witnesses say that they thought he was dead.

In contrast to what Keith's medical team has advised, the Board has decided that he does not have a permanent injury. Even though Keith has a solid and consistent work history, and even though he sustained three spinal compression fractures from the fall, they are calling his ongoing pain "pre-existing."

While the Board originally funded some physiotherapy, they ultimately turned down the physiotherapist's strongly worded request for ongoing treatments to manage Keith's continuing chronic pain. His condition has continued to degrade, and requests for more therapy – at the recommendation of a health care professional – continue to be denied. Now, he is on so many medications related to this pain that his doctor has ordered him not to drive and functioning day to day is a struggle.

But Keith is suffering from more than physical pain. Shortly after the injury, Keith's doctor became concerned about his depression and poor sleep due to a possible brain injury. As his treating physician, he suggested Keith see a psychologist. The WSIB denied this request. When his depression reached what his doctor called "profound levels" he again requested psychological support for his patient. He was again denied. Some two years and many requests later, Keith was finally granted limited sessions, though any activities related to brain injury rehabilitation or occupational therapy (both of which the psychologist has strongly recommended) have been flatly turned down.

While Keith's mental health has been improving, his psychologist remains concerned that he struggles with severe depression, a lack of purpose and is at risk of suicide. Their funded sessions together are now complete. His psychologist doesn't anticipate receiving approval for more, but even if they do, it will take months.

Every medical professional in Keith's life agrees that he needs continued physical and psychological support in order to regain and retain some quality of life. The WSIB – who are not doctors and who have never met Keith – have ignored the recommendations and requests of all of them.

** Not the injured worker's real name.*

ACKNOWLEDGMENTS

The Ontario Federation of Labour and the Ontario Network of Injured Worker Groups would like to thank the following health care providers for having the courage to come forward and raise concerns about the well-being of their patients as a result of treatment by the Workplace Safety and Insurance Board:

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Dr. Keith Klassen, Registered Psychologist

Dr. Giorgio Ilacqua, Registered Psychologist

Dr. Carol Parrott, Registered Psychologist

They have given confidence to many other medical professionals from a variety of disciplines to come forward to share similar experiences.

The OFL and ONIWG would also like to thank the patients who allowed their doctors to share their painful experiences with us in order to fight for changes that will ensure that other workers do not have to face the harm they have been through.

Finally, we would like to thank the team of advocates at the Injured Workers' Consultants Community Legal Clinic for helping with this project and, in particular, David Newberry and Laura Lunansky for their hard work in compiling this report.

